

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 21, 2017 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	12-41200-D-13 PGM-6	JOSE/CYNTHIA GUERRERO	MOTION TO REFINANCE 10-25-17 [92]
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2.	17-26000-D-13 RDG-1	JAMES SWOFFORD	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-23-17 [14]
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3. 17-25901-D-13 CHARLES/SHANNON MCKINLEY OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-23-17 [16]

4. 17-22910-D-13 MURIAH KENDALL MOTION TO CONFIRM PLAN
SLE-4 9-28-17 [55]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve HUD, which holds a \$66,424 secured claim, at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b); (2) the moving party scheduled Medical Payment Data, J&L Teamworks, the third largest unsecured creditor, with only the name of the city as the address, and therefore, this creditor was not served, whereas J&L Teamworks appears regularly in bankruptcy schedules and has a readily accessible address; and (3) the motion refers to a second amended plan having been filed on September 28, 2017, whereas no such plan was filed that day or at all. Instead, the moving party merely attached a copy of the plan to the motion, contrary to LBR 3015-1(d)(1).

For the reasons stated, the motion will be denied and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

5. 14-30013-D-13 ALICIA SANTOS MOTION TO MODIFY PLAN
MJH-4 9-29-17 [80]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

6. 17-21917-D-13 ANTONIO/FIDELIA JACQUEZ MOTION TO CONFIRM PLAN
TOG-2 9-22-17 [58]

7. 17-25223-D-13 JATINDER KLAIR MOTION TO VALUE COLLATERAL OF
TOG-3 BMO HARRIS BANK NA
9-29-17 [45]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

8. 17-25223-D-13 JATINDER KLAIR MOTION TO CONFIRM PLAN
TOG-4 9-28-17 [37]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party filed his schedules a month into this case, pursuant to an order extending time. However, when he filed the schedules, he failed to file an amended master address list to include creditors that had not been included on his original master address list or had been included by name only, with no address. Thus, when the moving party utilized the PACER matrix for service of this motion, he failed to serve ENGS Commercial Finance, scheduled as holding a \$50,000 secured claim, and Forward Financing and Swift Capital, scheduled as holding unsecured claims in unknown amounts. In addition, the moving party failed to serve Frontier Cargo, Inc. and Harinder Klair, listed as co-debtors on most of the debtor's scheduled debts. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes co-debtors on obligations of the debtor. The court notes that the debtor also failed to comply with Bankr. P. 1007(a)(1), which requires debtors to list co-debtors on their master address list.

As a result of these service defects, the motion will be denied and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

9.	16-21825-D-13 CLH-6	JUAN/NADINE MORGA	CONTINUED MOTION FOR COMPENSATION FOR CHARLES L. HASTINGS, DEBTORS' ATTORNEY 10-4-17 [107]
10.	17-25934-D-13 RDG-1	JESUS REYNAGA	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-23-17 [17]
11.	17-26044-D-13 MRG-1	CAROLL THOMPSON	OBJECTION TO CONFIRMATION OF PLAN BY MOUNTAIN WEST FINANCIAL 10-13-17 [19]
12.	17-26044-D-13 RDG-2	CAROLL THOMPSON	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-23-17 [22]

13. 17-21469-D-13 AMY EVANS
RS-3

MOTION TO CONFIRM PLAN
10-3-17 [75]

14. 17-25971-D-13 JONATHAN/JESSICA REYES
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-23-17 [13]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

15. 17-25772-D-13 MIGUEL JUNIZ AND CELINA
TOG-2 AGUINIGA

MOTION TO CONFIRM PLAN
9-28-17 [19]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving papers do not accurately identify the joint debtor. All of the moving papers name the joint debtor as Agripina Yopez, whereas according to the petition, the joint debtor's name is Celina Aguiniga.¹ Thus, the moving papers identify the joint debtor by an incorrect first name and an incorrect last name.² Although the plan itself correctly identifies the joint debtor, the court finds that, as a matter of adequate notice to creditors, and especially because the debtor and joint debtor have different last names, it was necessary for the moving papers to correctly identify the joint debtor.

As a result of this notice defect, the motion will be denied and the court need not reach the issues raised by Wells Fargo Bank at this time. The motion will be denied by minute order. No appearance is necessary.

1 The petition does not list Agripina Yopez as another name used by the debtor.

2 The supporting declaration is signed only by the debtor and does not mention the joint debtor by name except in the caption, where it is incorrect.

16. 17-26073-D-13 ALFREDO/SONJA PEREZ
RDG-1
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-23-17 [17]
17. 17-26580-D-13 ANTHONY MOORE
EGS-1
GUILD MORTGAGE COMPANY VS.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-21-17 [18]
18. 17-21381-D-13 SANDRA SANDERS
PGM-2
MOTION TO CONFIRM PLAN
10-6-17 [58]
19. 17-23785-D-13 JASWINDER SINGH
MJH-3
MOTION TO CONFIRM PLAN
9-28-17 [40]

20. 17-23786-D-13 KEVIN LAGORIO AND MISTII MOTION TO CONFIRM PLAN
MJH-4 ROCHA-LAGORIO 10-6-17 [58]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

21. 17-21791-D-13 PATRICIA BROWN MOTION TO CONFIRM PLAN
FI-2 9-28-17 [69]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve the U.S. Dept. of Education, which holds sizeable claims, at its address on the Roster of Governmental Agencies, as required by LBR 2002-1.

As a result of this service defect, the motion will be denied and the court need not consider the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

22. 17-25995-D-13 JEANETTE JONES OBJECTION TO CONFIRMATION OF
BDA-1 PLAN BY CAPITAL ONE FINANCE
10-11-17 [14]

Final ruling:

This is the objection of Capital One Finance to confirmation of the debtor's chapter 13 plan. On November 13, 2017, the debtor filed a first amended plan and a motion to confirm it, set for hearing on January 16, 2018. As a result of the filing of the first amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

23. 17-25995-D-13 JEANETTE JONES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-23-17 [18]

Final ruling:

This is the objection of the Chapter 13 trustee to confirmation of the debtor's chapter 13 plan. On November 13, 2017, the debtor filed a first amended plan and a motion to confirm it, set for hearing on January 16, 2018. As a result of the filing of the first amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

24. 17-25896-D-13 MICHAEL/SHARON ANTONOVICH OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-23-17 [13]

25. 12-41200-D-13 JOSE/CYNTHIA GUERRERO MOTION FOR COMPENSATION FOR
PGM-7 PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
11-2-17 [97]

26. 17-22627-D-13 GRACIELLA HERNANDEZ CONTINUED MOTION FOR
SCF-4 COMPENSATION BY THE LAW OFFICE
OF FLORES & BARRIOS FOR SIDNEY
C. FLORES, DEBTORS ATTORNEY(S)
9-13-17 [75]

Tentative ruling:

This is the motion of Sidney C. Flores (Counsel) for an award of compensation as the debtor's counsel. The trustee filed opposition, oral argument was held, and the hearing was continued to permit Counsel to supplement the record, which he has not done. Thus, the court intends to deny the motion because (1) the moving party failed to serve the debtor, as required by Fed. R. Bankr. P. 2002(a)(6); (2) the moving party failed to serve three of the creditors who had filed proofs of claim by the time this motion was filed at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); and (3) the moving party has failed to demonstrate that fees over and above the "no-look" fee permitted by LBR 2016-1(c)(1), \$4,000, are appropriate.

The court agrees with the trustee's objections that (1) a charge of \$1,200 for a Motion to Avoid Lien (actually, a motion to value collateral) is included in the responsibilities provided for in the Rights & Responsibilities, signed by the debtor and Counsel, as to be covered by the initial fee; and (2) a charge of \$450 for a motion to convert the case is excessive.

Counsel claims he expects his fees on a hourly basis to exceed \$8,310. First, as counsel has elected to receive fixed fees pursuant to Local Rule 2016-1(c), what his fees would be if he had chosen to be paid hourly is irrelevant. In fact, part

of (c) (3) specifically provides that the fee permitted under this subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. The court finds several problems with Counsel's time records. Second, he has not demonstrated his hourly rate, \$450, is reasonable. Third, the debtor might have retained counsel in Modesto, rather than San Jose; thus, Counsel's charge of 3.5 hours to appear at the meeting of creditors should have been unnecessary, and thus, was unreasonable. Fourth, much of the work was done by Counsel's paralegal, who is unidentified and whose qualifications to bill at \$150 per hour are not provided. Fifth, although much of the paralegal's work appears to have been substantive, the paralegal also billed for secretarial services, such as keying the client's information into the bankruptcy filing program, scanning and uploading documents, e-filing and serving documents, and arranging CourtCall appearances, which are considered part of overhead and are not compensable.

The court will hear the matter.

27.	17-22627-D-13	GRACIELLA HERNANDEZ	CONTINUED MOTION TO CONFIRM
	SCF-6		PLAN
			9-13-17 [85]

28.	15-26928-D-13	DAN/KIMBERLEE FRASER	MOTION TO INCUR DEBT
	JCK-4		10-30-17 [74]

29.	17-27084-D-13	ROBERTO MIRASOL	MOTION FOR TEMPORARY WAIVER OF
			THE CREDIT COUNSELING
			REQUIREMENT
			10-27-17 [1]

Final ruling:

This case was dismissed on November 14, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

30.	17-90871-D-13 TOG-2	MANUEL OLIVARES AND AGRIPINA YEPEZ	MOTION TO EXTEND AUTOMATIC STAY 11-7-17 [10]
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